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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,085	07/20/2001	Kenneth B. Higgins	5113A	2412
7590 Milliken & Company P.O. Box 1927 Spartanburg, SC 29304		05/11/2007	EXAMINER JUSKA, CHERYL ANN	
			ART UNIT 1771	PAPER NUMBER
			MAIL DATE 05/11/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/910,085	<b>Applicant(s)</b> HIGGINS ET AL.	
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-51, 54, 58-85, 89-100, 103-106, 109-112, 114, 119, 122 and 143-145 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-51, 54, 58-85, 89-100, 103-106, 109-112, 114, 119, 122, and 143-145 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3, 4, 7-17, 19-42, 44-50, 51, 54, 58-60, 62-67, 69-73, 75-85, 89-100, 103-106, 109-112, 114, 119, 122, and 143-145 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,522,857 issued to HIGGINS in view of 5,610,207 issued to DE SIMONE et al. and in further view of US 5,540,968 issued to HIGGINS as set forth in sections 3 and 6 of the last Office Action (10/03/06).

Applicant has not amended the claims in an attempt to overcome the prior art rejection. Rather, applicant traverses said rejection by asserting the claimed “‘preformed rebond foam sheet’ is not a mere method limitation in an article claim” (Response, page 1, 1<sup>st</sup> paragraph). Specifically, applicant argues that said “preformed rebond foam sheet” requires an adhesive layer to bond said rebond sheet to the underside of the primary carpet fabric. This argument is unpersuasive since the rejection is based upon the premise that the method step of “preforming” of the rebond foam sheet is not given patentable weight since it amounts to a method limitation in an article claim. The rejection gives patentable weight to the adhesive layer being in contacting bonding relation to the rebond foam. However, said adhesive layer was rejected as being obvious over the prior art (from section 5, page 3, Non-Final Office Action mailed 04/14/05):

Higgins ‘857 exemplifies a carrier layer between the adhesive layer and the foam backing layer. However, it is well known in the art that said carrier

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layer can be omitted so that the adhesive layer is in contacting bonding relation to the foam backing. For example, Higgins '968 teaches a similar carpet structure wherein a reinforcement layer (i.e., carrier layer) is between the adhesive layer and the foam layer (Figure 3A and col. 6, lines 8-12). **Higgins '968 also teaches an equivalent structure wherein said reinforcement layer is omitted and said adhesive layer directly contacts the foam layer (col. 6, lines 44-54 and Figure 4A). Thus, it would have been obvious to one skilled in the art to omit the carrier layer of Higgins '857, as is taught by Higgins '968, when bonding the rebond foam layer of de Simone to the Higgins '857 carpet tile.** Motivation to do so would be to eliminate a process step and the required apparatus unnecessary and to eliminate a layer, wherein the overall thickness of the carpet tile is reduced. [Emphasis added.]

Therefore, applicant's arguments are found unpersuasive and the above rejection is maintained.

3. Claims 5, 6, 18, and 43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over both of the cited HIGGINS patents and the DE SIMONE patent as set forth above, and in further view of EP 048 986 issued to DOW for the reasons of record.

4. Claims 61, 68, and 74 stand rejected under 35 U.S.C. 103(a) as being unpatentable over both of the cited HIGGINS patents and the DE SIMONE patent as set forth above, and in further view of US 5,616,200 issued to HAMILTON for the reasons of record.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

6. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER